

MAY 25 1993

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 93-95
ERIC R. HILDING)	File No. BPH-911115MR
JUDY YEP HUGHES)	File No. BPH-911115MT
For a Construction Permit)	
For a New FM Station on)	
Channel 281A in)	
Windsor, California)	

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MAY 25 1993

To: Richard L. Sippel
Administrative Law Judge

FCC MAIL BRANCH

MOTION TO STRIKE

Judy Yep Hughes, by her attorney, hereby moves to strike certain parts of Eric Hilding's May 4, 1993 Standardized Integration Statement, as set forth below. Section 1.325(c)(2) of the Commission's rules sets forth the categories of facts to be included in any applicant's Standardized Integration Statement. As detailed below, well over half of Eric Hilding's Integration Statement is devoted to matters which are either argument and therefore clearly outside the scope of the Rule, or alleged "facts" which do not in any way fit within these categories. Therefore, these matters must be stricken as irrelevant to the Standardized Integration Statement and the standard comparative issue, the only issue specified in this proceeding.¹ Because Mr. Hilding's rambling "Standardized Integration Statement" is not properly referenced under the Rule, attached hereto for the presiding judge's easy reference is a

¹ Indeed, Mr. Hilding's copious reference to irrelevant matters appears designed to prejudice the presiding judge in his favor and borders on abuse of process.

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copy in its entirety, with each objectionable section marked with a number from 1-15. The reason to strike each numbered item is noted and treated seriatim below.

Item 1 - page 1.

After identifying himself as a "white Caucasian male," the material included as Item 1 is a legal argument about Mr. Hilding's claimed discrimination against him by the Commission's policies as a result of his gender. This legal argument should be stricken since it does not fall within any "fact" category of Section 1.325(c)(2) of the rules.

Item 2 - page 2.

Item 2 is further argument, devoid of facts, which contends that the Commission's "local residence" comparative criteria are discriminatory. As a result, this argument should be stricken.

Item 3 - page 2.

Despite his argument that the local residence criteria is discriminatory, Mr. Hilding next claims he will move to Windsor. Ms. Hughes does not object to his alleged plan in this regard. However, the legal conclusion noted "which may be construed as future residence credit" falls outside Section 1.325(c)(2) of the rules and is subject to proof. Therefore, this clause should be stricken.

Item 4 - page 2.

Item 4 is Mr. Hilding's attempt to claim "pioneer" preferences for filing "approximately" 15 new FM service

allotments.² As such, these materials must be stricken because they do not fall within Section 1.325(c)(2) of the Rules and attempt to impose an outcome favorable to Mr. Hilding to the Commission's Proposals to Reform the Commission's Comparative Hearing Process, ("Comparative Process Rulemaking") 6 FCC Rcd 157 (1990).

A second part of Item 4 (the last full paragraph at page 2) attempts to make a claim for "enhancement" credit for Mr. Hilding's proposed use of a "single-bay FM antenna" and the proposed use by Mr. Hilding of an unspecified best system of "digital audio delivery" of his proposed signal. Nowhere in Section 1.325(c)(2) of the Rules is there a category which remotely requests or even vaguely specifies the revelation of these perceived, but undocumented, proposals.³ Therefore, they must be stricken.

Item 5 - page 3.

Item 5 attempts to claim a U.S. Military Service preference for Mr. Hilding and also sets forth arguments why civic involvement outside the city of license or service area should be allowed, because to do otherwise is somehow discriminatory. Mr.

² It is noteworthy that Mr. Hilding has been requested to produce, but has refused to provide, documents in this regard which bear on his commitment to be integrated into management at the Windsor station.

³ Ms. Hughes does not object to Mr. Hilding's inclusion of his proposed auxiliary power generator in his statement, despite the fact that this item, though entitled to some comparative credit, is not required by the Commission to be included in Standardized Integration Statements under Section 1.325(c)(2) of the Commission's Rules.

Hilding then concludes with a request for a "bonus" preference for the "diversity" of his broadcast experience and noting his service as a cable TV Commissioner in Morgan Hill, CA, which is nowhere even close to his proposed service area. First, the U.S. Military Service preference must be rejected. Neither Section 1.325(c)(2) of the Rules nor any Commission case law supports this claim of preference. Second, Mr. Hilding's urging for "bonus" preference is not only outside the rules but is again nothing more than argument. Finally, Mr. Hilding's Cable TV Commissioner role is not broadcast experience and therefore must be stricken.

Item 6 - page 4.

Item 6 is a claim by Mr. Hilding for developing a programming format in 1991 for a radio station in Morgan Hill, CA. As such, the material marked must be stricken because Section 1.325(c)(2) of the Commission's Rules applies only to facts concerning broadcast experience, not perceived subjective evaluation of the content of that experience.

Items 7-13 - pages 4-5.

Items 7-13 each mention the programming formats at radio stations for which Mr. Hilding claims broadcast experience. The formats at those stations are irrelevant to Mr. Hilding's claims of broadcast experience under the Commission's rules and therefore should be stricken.

Item 14 - pages 5-7

Item 14 is a further diatribe by Mr. Hilding again claiming

credit for his engineering work in a Commission rulemaking, an enhancement credit for alleged "other" media experience and an "accommodation" preference in the Comparative Process Rulemaking due to his alleged "emotional and physical hardships" for being discriminated against for being a white male and attacking black male and female preferences. Finally, Mr. Hilding concludes his argument with a request for a "supplementary accommodation preference" for the Commission's alleged failure to act on the Comparative Process Rulemaking.

Virtually all of Item 14 is argument. Thus, strictly as a matter of procedure under Section 1.325(c)(2) of the Rules, all of this material should be stricken. In addition, all of this argument is again an attempt by Mr. Hilding to prejudice the outcome of the Comparative Process Rulemaking. As such, it is not only procedurally improper but is an obvious attempt to prejudice the presiding judge and this proceeding. As such, the material must be stricken.

Item 15 - pages 7-15.

Item 15 is a two part objection. From pages 7-12 is a subjective rendition of Mr. Hilding's alleged civic activities, none of which took place in the proposed city of license or the proposed service area. As such, they clearly fall outside Section 1.32(c)(2)(F) which call for only those civic activities within the city of license or proposed service area. Therefore, they must be stricken.

The second objectionable part is pages 13-15, which contain

information concerning Mr. Hilding's involvement in media fields unrelated to broadcasting, including radio satellite systems, the corporate times newspaper, the U.S. Army Security Agency and miscellaneous independent contractor work allegedly performed by Mr. Hilding in the broadcast area. The final paragraph at p. 15 concludes with legal argument by Mr. Hilding. Clearly, the last paragraph must be stricken because it is only legal argument. The other material concerns related media and not broadcast experience (compare the alleged broadcast experience material of Mr. Hilding at pns 3-5. which Ms. Hughes is not moving to strike)

INTEGRATION STATEMENT

Eric R. Hilding is an individual applicant with 100% ownership and management control. He propose to work 40 (or more) hours per week at the new FM station in the full-time capacity of General Manager. Mr. Hilding's duties will include, but are not limited to, the following:

1. Overall management of station operations and personnel to include any part-time employees;
2. Short, medium and long-range planning as well as the managing of the financial affairs of the station;
3. Interface with local community organizations in Windsor and the service area;
4. Responsibility for programming direction to include the supervision of music aired on the station;
5. Supervision of station construction activities as well as equipment selection and engineering;
6. Administrative management and supervision of traffic and billing operations and secretarial staff;
7. Responsibility for direction of marketing and sales activities for the new FM station.

In order to accomplish his integration proposal, Hilding will terminate any then current employment activities (whether of a full-time, part-time or other nature), including that or those with any form of mass media, prior to application for program test authority for the new FM station at Windsor, CA.

Eric R. Hilding is a Caucasian male, and believes that the Commission's FCC 301 and integration policies for "minority" and/or "female" status for preferential treatment in selection of best qualified applicant are a violation of his civil rights to equal opportunity as intended by the U.S. Constitution.]

2 - Eric R. Hilding is a United States of America citizen and believes that the FCC 301 and integration policies which evoke "local residence" for either community of license and/or service area preferential treatment in the selection of a best qualified applicant are a violation of his civil rights to equal opportunity as intended by the U.S. Constitution, regardless of current U.S. residence before grant of an FCC permit. He does intend to move to Windsor prior to program test authority for the new FM which may be construed as future residence credit.

3 - As original Channel Petitioner for a new FM allotment at Windsor, California, Eric R. Hilding claims a "Pioneer (or) Channel Petitioner Preference" enhancement for his efforts, time and expense which has resulted in a public service benefit. Hilding may claim "double" such credit as may be applicable.

4 - Eric R. Hilding claims additional Public Service Benefit enhancement credit as the initiator of approximately 15 new FM services allotments within the state of California, many of which resulted in a "first local service" to the public.

Due to certain topographical considerations in the new Windsor FM service area, Eric R. Hilding claims a "Technical Merit" enhancement for the proposed use of a single-bay FM antenna in order to reduce multi-path interference and better serve the public interest. Additional enhancement credit is claimed for the use of compact disc quality music service, as well as any Satellite and/or digital audio delivery vehicles since these have evolved into "best possible service" attribute requirements of any broadcast station in today's "hi-tech" consumer marketplace. Eric R. Hilding claims additional credit for any new technology which may become available and utilized.

Auxiliary Power enhancement credit is claimed for Hilding's proposed use of back-up electrical power generators at both the transmitter and studio locations, in order to insure continuity of programming to the public within Windsor, California, and the entire service area.

3 Eric R. Hilding claims an enhancement for U.S. Military service in the defense of the United States of America. He also claims enhancement for substantial community and public service (civic) participation in various communities, and that it is a violation of his civil rights and equal protection for the Commission to discriminate between civic involvement in any capacity, whether within a "community of license", "service area" or other locale. "Equal footing" civic participation credit enhancement is claimed regardless of area of service. Since the implied community service preference is allegedly a yardstick of an applicant's past willingness to become an effective interface with the public, discrimination against any applicant by geographical area is at best, an absurdity.

Eric R. Hilding claims multiple broadcast experience preferences to include a "bonus" preference for accumulated "diversity" of broadcast and media experience in a wide variety of positions including management as later described.

Eric R. Hilding was a Cable TV Commissioner appointed by the Morgan Hill City Council from July 1987 through 11/4/92 to include positions as both Chairperson and Vice-Chairperson.

Eric R. Hilding works as an independent program producer and announcer on KSQQ Radio, Morgan Hill, California, with a special nightly program Monday through Friday evenings. He

6 — has done this since January 21, 1991. The program format is Hilding's development, with primary focus being that of airing "positive" oriented program content, another preference sought.

Eric R. Hilding assisted the new owners of KWSS (KFAT) Radio, Gilroy, California, during ownership transition by working a two week airshift until the regular new staff arrived.

11 The format was an "odd" variety of music including country.)

Eric R. Hilding hosted a two regular weekend airshifts at KNRV Radio, Monterey, California, from about September, 1982 through February or March, 1982. The format at KNRV was oldies, and included various public affairs programs.

12 Eric R. Hilding was employed as an Account Executive at KTFX Radio, Tulsa, Oklahoma, from November, 1979 through late March or early April of 1980. The format at KTFX was known as "Modern Country".

13 Eric R. Hilding claims enhancement credit for his various broadcast application engineering work before the Commission, to include his Petition For Reconsideration in MM Docket No. 86-144, which resulted in the revision of Commission rules to benefit Class A station owners and operators by now providing for the use of higher elevation antenna sites to better serve the public. FM Allocation Rules, 3 FCC Rcd 2477 (1988).

14 Eric R. Hilding claims a credit enhancement for "other media" experience, including TV, print and advertising agency business/broadcast talent experience as described later herin.

Eric R. Hilding also claims an additional, and extremely long overdue, "accommodation" enhancement preference as partial compensation the Commission's failure to act responsibly on his "Petition For Rulemaking To Amend 1965 Policy On Comparative Broadcast Hearings" which has been in excessive "limbo" at the Commission since May, 1985. Arbitrary, Capricious and Abuse

of Agency Discretion at best describe the Commission's failures to take appropriate action. In 1987 the Commission acknowledged to the United States Court of Appeals for the Ninth Circuit, in Eric R. Hilding v. Federal Communications Commission, that said petition was still "pending", and inferred forthwith action.

14 Eric R. Hilding finally seeks a supplementary accommodation preference for the additional administrative discrimination to Hilding due to the Commission's failure to take reasonable and prompt action in GC Docket No. 92-52. One inquiry by Hilding to the Commission as to status produced an FCC response that the matter was "one of about 100 items unacted upon which were found in a box underneath the previous FCC Chairman's desk."

Eric R. Hilding claims in advance, any preferences not presently available or known, to which he may be entitled to as, resulting from these hearing processes or policy changes.

Incorporated herein is a detailed account of experience by Eric R. Hilding pertaining to civic participation and additional broadcasting/related media involvements.

15 CIVIC ACTIVITIES - Eric R. Hilding

A. Morgan Hill Rotary Club - Mr. Hilding has been a member of Rotary International (Morgan Hill, California Chapter) since February of 1987, a member of the Board of Directors of the club during the 1989/1990 term. He has perfect attendance of required weekly meetings and/or make-ups, and has volunteered additional time to outside events including six annual weekend fundraisers (Mushroom Mardi Gras) and five senior citizens dinner projects. Mr. Hilding has served on the RYLA (Rotary Youth Leadership Awards) committee for six years, and has been the Chairman thereof for five years.

B. Morgan Hill Citizens Commission Against Drug Abuse - From July, 1986 through 1988, Mr. Hilding made contributions of time and effort to several community area anti-drug program events, chaperoned dances and secured Radio/TV coverage.

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C. Community Law Enforcement Foundation - Mr. Hilding contributed time and effort at six of the organization's annual "Black Tie Auction" fundraisers since 1987.

D. South County Board of Realtors - While employed at Ticor Title Insurance during 1986-1987, Mr. Hilding was a member of this non-profit organization and Co-Chairman of the Education Committee. In addition to attending regular monthly meetings, he had the responsibility for conducting monthly video taped Continuing Education Programs for members.

E. San Benito County Board of Realtors - Also while employed at Ticor Title during 1986-1987, Mr. Hilding was Entertainment Chairman for this non-profit organization's 1986 "Christmas CanTree" food drive project for needy families. In addition to regular board and planning meetings, Mr. Hilding's involvement included securing all of the entertainment.

F. Xerox Social Service Leave Program - Mr. Hilding was honored as one of 30 Xerox employees nationally in 1977 selected to participate in this community service program. As a result of supervising probationary court wards employed at the Xerox parts and supplies center, he spent 10 months working for the County of Santa Clara Juvenile Probation Department on a program called "Project J.O.B." (Juvenile Opportunities in Business). His activities included developing both job and role model type opportunities within other major businesses in Santa Clara County (California). The program involved juvenile offenders within the county. In addition to coordinating activities, raising of gift donations and securing volunteers, Mr. Hilding was responsible for the 1987 Christmas party at one of the Juvenile Hall incarceration hall wings. He had also made]

15- frequent visits to the James Ranch Boys Correctional Facility at Morgan Hill during this project, as well as what was the Muriel Wright Center for Girls. After the Social Service Leave Assignment, Mr. Hilding made material contributions of many self-improvement books and tapes to the James Ranch facility. He assisted in the 1978 Christmas activities and provided some of the entertainment by playing the piano and singing. Mr. Hilding also assisted in an event at the Santa Clara County Children's Shelter and participated in various after-hours events at the County of Santa Clara Juvenile Probation Center.

G. Xerox Community Involvement Program - While on the Xerox Social Service Leave Program, Mr. Hilding remained very involved with the local Xerox Branch XCIP group. As a result, he was instrumental in obtaining XCIP funding and volunteers which provided for the partial refurbishment of an alternative residence home for emotionally disturbed girls, operated by non-profit organization Mental Health Rehabilitation Services. Mr. Hilding donated personal time to the project and made many follow-up visits to serve as a male role model influence at both the girls and boys homes. He frequently provided musical entertainment programs. In 1977 or 1978, Mr. Hilding obtained XCIP permission to fund and host a Thanksgiving Dinner at a treatment facility for mentally ill patients near White and McKee Road(s) in San Jose. He organized the event and also provided musical entertainment.

H. Monterey Bay Girl Scout Council - While employed as

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I. Muscular Dystrophy Association - Also while in the position of Program Director at KIDD Radio, Mr. Hilding worked closely with MDA's "Radio Love Network" and arranged for other KIDD staff members to contribute time during the 1984 Telethon event broadcast on KNTV-TV in San Jose. Although Mr. Hilding had resigned from KIDD prior to the Labor Day weekend event, he followed through in his commitment and worked an entire shift at the MDA Telethon event. In 1977 or 1978, Mr. Hilding also volunteered time to MDA and was co-host of the outdoor musical entertainment at a San Francisco park. A major San Francisco TV station broadcast the activities throughout the region. Mr. Hilding was also responsible for securing additional people to volunteer as well as musical entertainment for the outdoor concert fundraiser activities. In March, 1989, Mr. Hilding participated in a local MDA "Jail-A-Thon", raising contributions for the organization by telemarketing.

J. Lion's Club "White Cane" Event - In September or October of 1983, MR. Hilding donated personal time to do remote broadcasts for KDON-FM Radio and to assist in sales of beverages at the Lion's Club event location in the Northridge Mall located in Salinas, California.

K. Gilroy Community Theatre - In the fall period of 1982, Mr. Hilding participated in a GCT production of "Wait Until Dark" as an actor and set construction.

L. South Valley Community Theatre - In the fall of 1992, Mr. Hilding was selected for a lead role as "Clifton Feddington" in "The 1940's Radio Hour", and assisted in set construction. He was also responsible for substantial ticket sales through his personal networking and promotion to benefit the theatre.

M. West Valley Amateur Radio Club - Mr. Hilding held the

S. Public Service via Amateur Radio - Mr. Hilding was first licensed by the FCC in January of 1957. During the years from approximately 1959 through 1964, Mr. Hilding frequently handled "phone patch" traffic over his ham station, enabling American service personnel stationed overseas to talk home with their families. Specific recollections include personnel in Greenland, the Marshall Islands, Okinawa, Guam, Midway and Antarctic bases. Since third party traffic was not allowed

BROADCASTING/RELATED MEDIA - Eric R. Hilding

A. Satellite Program Network (SPN), A division of Satellite Syndicated Systems - During a period of approximately 3 months from August, 1980 through October, 1980, Mr. Hilding served as an independent contractor/consultant. The specific project involved a test marketing program for merchandising U.S. Sprint telephone system service over Satellite TV. During the project, Mr. Hilding wrote and produced several Direct Response TV commercials which were aired over the network. Responsibilities also involved a feasibility study to determine possibilities of utilizing telemarketing as an auxiliary form of marketing. Mr. Hilding reported directly to the Senior Vice-President of the organization.

B. Greenwood Sales Training Films - In either 1980 or 1981. MR. Hilding was hired to be an actor in several radio

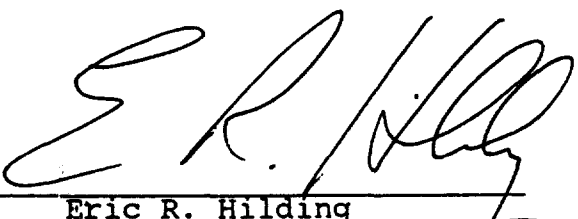
for placement of creative and marketing activities. He owned mobile/portable recording studio equipment from about 1972 to 1974, and was sole engineer. As a musician, Hilding played in several bands which received radio airplay for records, and Mr. Hilding also performed on a Dick Clark national TV program, and several performances on San Jose station KICU-TV. One performance at the Fillmore Auditorium was broadcast over a San Francisco radio station. Mr. Hilding has volunteered his time as the main judging stand parade and TV announcer for three "4th of July" parade events televised in Morgan Hill.

"[S]ince most of the criteria currently used in comparative new and comparative renewal licensing hearings have developed through decisions in individual cases, modifying our process on a case-by-case basis would be consistent with precedent in this area. In an area such as this it is generally recognized that an administrative agency enjoys considerable discretion to utilize either ad hoc decisions or rule making for developing appropriate standards." Comparative Renewal Process, 3 FCC Rcd 5179, 5197 (1988) (footnote omitted & emphasis added).

DECLARATION UNDER PENALTY OF PERJURY

Eric R. Hilding declares under penalty of perjury that the foregoing is true and correct to the best of his knowledge.

Date: May 4, 1993


Eric R. Hilding

Eric R. Hilding

INTEGRATION STATEMENT

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CERTIFICATE OF SERVICE

I, Peter A. Casciato, certify that the following is true and correct:

I am employed in the City and County of San Francisco, California, am over the age of eighteen years, and am not a party to the within entitled action:

My business address is: 1500 Sansome St., Suite 201, San Francisco, California 94111.

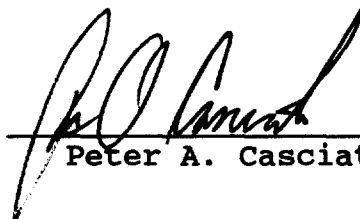
On May 25, 1993, I caused the attached Motion to Strike of Judy Yep Hughes and accompanying documents to be served by causing true copies thereof, enclosed in sealed envelopes with postage thereon fully prepaid, to be sent by regular U.S. Mail in San Francisco, CA for delivery as follows:

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